me highly probable that he would inform the police of his status. Further, it is highly improbable, in my opinion, that Yong Khoon the detective, who is in no way connected with the parties, should for no apparent reason give false evidence.

I also think the trial Judge misdirected himself in holding that Lee Wee Nam's evidence took the case no further. This witness admittedly occupies a prominent position in the Chinese community, is the managing director of the Sze Hai Tong Bank, and a disinterested witness. He comes from the same village in China as Lim Ho Swa, applied for Letters of Administration to his estate at the request of his widow Lee Sai Choo, and was granted a power of attorney for that purpose. He stated that he specifically asked Lee Sai Choo if she had any children, and she told him she had not.

The trial Judge considered that this statement of Lee Sai Choo, if it had been made under 'neutral' circumstances, would have carried weight, but that she had an interest in representing to Lee Wee Nam that she had no children, as she would become entitled to the whole of the deceased's property instead of only one-third, but, as Mr. Braddell pointed out, that was incorrect, as the deceased had brothers and sisters, and that there was no evidence of fraud on her behalf, but only a vague probability.

In connection with the trial Judge's reference to the absence of adoption agreements, Mr. Braddell pointed out that there was no evidence of any custom to preserve such documents, and quoted text-books on Chinese custom which indicated that although there were adoption ceremonies, there were not necessarily adoption documents.

There is only one other matter I consider needs reference to. The trial Judge refers to the fact that the defendant did not take out Letters of Administration to his father's estate and thus deprived the Colony of revenue. It is not quite clear whether the Judge was influenced by this fact or not, but if he was, he was not justified in being so influenced, for it appears that Letters of Administration were taken out by some other person, and estate duty was duly paid.

Taking the case as a whole, I consider the probabilities are all in favour of the appellant, and I would allow the appeal with costs both here and below, and dismiss the plaintiff's action. The deposit should be paid out to the appellant's solicitors.

Terrell, Ag. C.J., S.S.—I agree.

Gordon-Smith, Ag. J.A.—I agree and have nothing to add.

Appeal allowed.

Solicitors for the Appellant—*S. G. Pillay & Co.*

Solicitor for the Respondent—*E. M. Tampoe-Phillips.*

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, Ag. J.A.

July 2, 1940.

MURUGAPPA CHETTIAR

v.

KRISHNAPPA CHETTIAR & OTHERS.

[MALACCA CIVIL SUIT No. 57 of 1938]

Foreign Judgment—Reciprocal Enforcement of Judgments Ordinance (Cap. 46)—Sec. 3 s.s. 2—Hundi—Whether negotiable.

The Courts of the Colony will refuse to enforce or give effect to a judgment obtained in a foreign Court if any of the conditions contained in Sec. 3 s.s. 2 of the Reciprocal Enforcement of Judgments Ordinance are present in the case before the Court.

Semble, that if none of these conditions are present the Court will give effect to a judgment obtained in a foreign Court.

The Court will decline to act as a Court of Appeal trying an issue as to whether the decision of a Judge of a foreign Court was correct in law.

Obiter, a judgment of a foreign Court obtained in default of appearance will not be enforced in the Courts of the Colony when the defendant at the time the suit was commenced was not a subject of nor resident in the country in which the judgment was obtained.

Also held, that a Hundi is a negotiable instrument within the meaning of the Bills of Exchange Act.

Raman Chetty v. Veerappa Chetty (1931), S.S.L.R. 30 not followed.

Firm Sadasuk Janki Das v. Sir Kishen Parsad & Another 1918 A.I.R. (P.C.) 146 followed.

Cases referred to:—

1. *Adansonia Fibre Co.,* 9 Ch. App. 635.
2. *Firm Sadasuk Janki Das v. Sir Kishen Parsad & anor.,* 1918 A.I.R. (P.C.) 146.
3. *Godard v. Gray,* 6 Q.B. Cases at p. 149.
4. *Harimohan Ghose v. Sourendra Nath Nitter & ors.,* 1925 A.I.R. (Cal.) 1153.
5. *Jacobson v. Frachon,* 1927, 44 T.L.R. 103.
6. *Johnston v. Janvivi,* 1928 A.I.R. Lahore 722.

7. *A.O.D.M.K.O.D.A.M. Luther Co. v. James Sagor & Co.*, (1921) 3 K.B. 532.
8. *In re Macartney; Macfarlane v. Macartney*, (1921) 1 Ch. D. p. 522.
9. *Mancherseh v. Govind Ganesch*, 1930 A.I.R. (Bom.) 424.
10. *Maya Nadan v. Annachalam Chetty*, 1938 A.I.R. (Mad.) 1106.
11. *Messina v. Petrococchino*, IV, L.R., P.C., A.C. 157.
12. *Meyer v. Ralli & ors.*, 1 Com. Pleas p. 358.
13. *Pease v. Hirst*, 34 Revised Reports p. 347.
14. *R.M.K.R.M. v. M.R.M.V.L.*, 1926 A.C. 761.
15. *Raman Chetty v. Veerappa Chetty*, 1931 S.S.L.R. 30.
16. *Robinson v. Fenner*, (1913) 3 K.B. 835.

16A. *Schibisby v. Westenholze*, 6 Q.B. Cases 155.

17. *Simpson v. Fogo*, 71 Eng. Reports at p. 85.
18. *Sitaram Krishna Padhye v. Chimandas Satehchand*, 1928 A.I.R. (Bom.) 516.
19. *Subramaniam v. Ramasamy Aiyer*, 30 I.L.R. (Mad.) 516.

HEARING.

C. H. Smith and *Hills* for the plaintiff.

M. B. Brash for the 1st Defendant.

S. C. Goho and *Shanmugam* for the 2nd Defendant

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Gordon-Smith, Ag. J.A.—This was a suit by specially endorsed writ to enforce the judgment of a foreign Court, namely, a judgment for Rs. 9132.2.5 ($5,891.71) dated the 27th January 1937, delivered in the Chief Court of the Pudukottai State, India, together with interest subsequently accruing on the amount of such judgment.

At the conclusion of the hearing before me I gave judgment for the plaintiff with costs and intimated that I would give my reasons in writing, subsequently.

Mr. C. H. Smith, with Mr. Hills, appeared for the plaintiff, Mr. Brash for the 1st defendant and Mr. Goho, with him Mr. Shanmugam for the 2nd defendant. I was informed that the 3rd defendant had not been served with the writ.

During the argument the following cases were cited:—

For the defence:—

1. *Messina v. Petrococchina*[11].
2. *Godard v. Gray*[3].
3. *Simpson v. Fogo*[17].
4. *Meyer v. Ralli*[12].
5. *A.O.D.M.K.D.A.M. Luther Co. v. James Sagor & Co.*[7].
6. *In re Macartney, Macfarlane v. Macartney*[8].
7. *Pease v. Hirst*[13].
8. *Adansonia Fibre Co.*[1].
9. *Firm Sadasuk Janki Das v. Sir Kishen Parsad & Anor.*[2].
10. *R.M.K.R.M. v. M.R.M.V.L.*[14].
11. *Harimohan Ghose v. Sourendra Nath Nitter & Ors.*[4].
12. *Mancherseh v. Govind Ganesch*[9].
13. *Maya Nadan v. Annachalam Ch.*[10].
14. *Subramaniam v. Ramasamy Aiyer* [19].
15. *Sitaram Krishna Padhye v. Chimandas Satehchand*[18].
16. *Johnston v. Javivi*[6].
17. *Raman Chetty v. Veerappa Chetty*[15].

For the plaintiff:—

1. *Godard v. Gray*[3].
2. *Robinson v. Fenner*[16].
3. *Jacobson v. Frachon*[5].

Also the following text books were referred to:—

Halsbury Vol. 1 p. 219, para. 485.

Mulla—Principles of Hindu Law (2nd Edn.) p. 195.

Everest and Strode, 3rd Edn. Law of Estoppel p. 135.

Lindley on Partnership (8th Edn.) pp. 167, 226, 232, 233.

Leave to defend having been obtained the two defendants filed defences which, more or less, were identical.

That of the 1st defendant was amended at the hearing and consequently also that of the reply, but this did not affect the issues.

Neither of these defences can be considered as models of pleadings as, except in respect of fraud, the issues in points of law attempted to be raised thereby were confused and inadequate in detail. As regards the charge of fraud in having obtained or induced the judgment, after the first defendant had given evidence, his counsel and also counsel for the 2nd defendant abandoned this charge, and quite rightly so and that allegation of the defence need not therefore be considered further. Before considering the other issues raised in point of law, either by the defences or in argument, it is necessary to consider the facts leading up to the Indian judgment.

The two defendants together with an elder brother, since deceased, named Nagappa, were members of a joint Hindu Family in India, the vilasam being O. RM. N. RM., which apparently consisted solely of these three brothers. The plaintiff is their uncle and his vilasam is O. RM. N. MR. It is unnecessary to trace the history of the acquisition or adoption of these vilasams. For easier reference I will refer to these respective vilasams as RM or MR as the case may be.

In 1928 or 1929 Nagappa started the money-lending business of RM in Malacca, in conjunction with the two defendants and as a joint Hindu Family business, all three brothers being entitled to 1/3rd equal shares. Nagappa was the principal or managing partner, until his death which took place on the 10th February 1932 in India. This business was carried on in the usual manner of a Chettiar money-lending business.

The third defendant Muthayee Achi is the widow of Nagappa and Letters of Administration of his estate in the Straits Settlements were granted to the Estate and Trust Agencies (1927) Ltd. on the 24th October, 1936. Apparently, but it is by no means clear, the business, of RM, so far as concerns the pre-existing partnership, has been wound up and the widow has, subsequently to 1936 received what was due to her in respect of her deceased husband's interest in the firm.

I can now come to the more relevant facts.

In November 1931 Nagappa borrowed the sum of $4,000 from the plaintiff and gave him a Hundi in respect thereof which is dated the 25th November 1931. The original was produced and exhibited in the Indian Court and is, I assume, filed there, but a certified copy of the same in Tamil was produced before me, together with a translation. The translation reads as follows:—

"Mark of invocation Omnipresence of Siva

"20th of Arppisi of the year Pirasorpathi Credit of O.RM.N.MR. of Visvanathapuram, Debit of O.RM. N.RM. of the same place ($4,000) O.RM.N.RM. Sinnakaruppan Chettiar of Malacca shall pay money to bearer to the order of O.RM.N.MR. Suppia Raja of Muar together with interest at ¾% (per month) as from this date in respect of this sum of dollars four thousand and debit against this place together with endorsement (appearing) on this. Pudukkotai Non judicial on one Anna red stamp as O.RM.N.RM. Nagappa Chettiar.

(The rest in English).

Translated by me

(Signed M.S. Hamza)

Sworn Interpreter of Courts

Malacca, 28.5.40."

It is clear that this Hundi was signed by the deceased Nagappa over a stamp, the remainder on the Tamil certified copy is endorsed in English with a note of protest and the fact of it being exhibit A, in the Indian Court proceedings.

Apparently after negotiations, this Hundi was not honoured or paid and the plaintiff commenced proceedings for the recovery of the amount due in the Chief Court of Pudukkotai State at the end of 1934. The defendants in that suit were the three defendants as in this suit together with Subbiah Raja as the 4th defendant.

Eventually the Indian Suit came on for trial on the 27th January, 1937.

This judgment was exhibited in the present suit and is the judgment which is questioned by the defendants.

The learned Judge recited various facts and it is complained that there is an inconsistency in these recitals in that it is firstly recited that the dishonoured Hundi was "executed" by the deceased Nagappa and shortly afterwards it states that the Hundi was "drawn" by the 1st defendant Krishnappa "as family manager and managing partner of that firm" (i.e. the firm of RM at Malacca). This may have been a slip by the Judge or it might even have been drawn up by the 1st defendant but it is not disputed that it was executed by Nagappa.

The learned Judge took the evidence of the plaintiff and that of the 4th defendant Subbiah Raja and had before him certain exhibits. Outstanding

amongst these exhibits was a letter dated the 22nd July 1922, written by the 1st defendant in India to Sinnakaruppan Chettiar, presumably the agent of the firm RM at Malacca. The main part of this letter reads as follows:—

> "My elder brother having received money from O.RM.N.RM. of Visvanathapuram wrote and gave a draft for four thousand dollars requiring you to pay money to the order of O.RM.N.MR. Suppia Raja of Muar together with interest as from the 20th of Arppisi of the year Pirasorpathi. Please pay money and write without causing unnecessary expenditure by delaying."

The learned Judge set out the issues that had been framed and then proceeded to examine the evidence given before him and the exhibits put in. He states, "These documents and the evidence given by the plaintiff's witnesses 1 and 2 prove the claim of the plaintiff", and he found on all the issues in favour of the plaintiff. Judgment was given against the defendants 1 and 2 against the property of Nagappa deceased in the hands of the 3rd defendant.

I will now attempt to set out the grounds on which this judgment is attacked. I have already stated that the charge of fraud was abandoned but it is interesting to note that this charge of fraud was based on the plaintiff having obtained a snap judgment contrary to a settlement previously come to, although it is clearly shown that both defendants were represented by counsel at the hearing, and in evidence before the 1st defendant stated that he had agreed to judgment given in favour of the plaintiff.

It was submitted in argument, if I understood such submissions correctly, that, apart from fraud, a foreign judgment which it was sought to enforce could be attacked on its merits where:—

(a) the law applied in the foreign Court was contrary to the law of the country where it is sought to enforce the judgment and one can go behind the judgment to ascertain the law applicable. Further (and it can be included in this submission), it was argued that a foreign judgment cannot be enforced in England or a Colony if the law applied in the foreign Court is contrary to the English or Colony Statute law.

In support of these submissions it was contended that Nagappa deceased borrowed the money in India as head of a joint Hindu Family and that therefore the two defendants were not liable other than in respect of the joint Hindu Family property in India. Therefore the judgment was manifestly wrong on the face of it.

(b) Alternatively it was argued that if the Court found that Nagappa signed the Hundi as Managing Partner of the Malacca firm then he did so as agent or partner in a foreign country and that his signature or act did not bind partners in Malacca.

For the 2nd defendant, it was argued that the Hundi was not a negotiable instrument (see *Raman Chetty* v. *Veerappa Chetty*[15]) but for the 1st defendant, it was argued that this decision of Murison, C.J. was wrong and that a Hundi is a negotiable instrument within the meaning of the Bills of Exchange Acts. I agree with the latter contention and I think that such decision would have been different had the Privy Council decision in *Firm Sadasuk Janki Das* v. *Sir Kishen Parsad & Anor.*[2] been brought to the notice of the learned Chief Justice.

(c) It was further submitted that the plaintiff was not entitled to bring the action at all as Suppia Raja was the payee, and he was therefore the only person who was entitled to sue.

(d) Another submission was that when a partner signs a document, unless it is shown on the face of that document that he does so on behalf of the firm then the other partners are not bound thereby. It was contended in this respect that the placing by Nagappa of his vilasam O. RM. N. MR. before his name was merely for the purpose of personal identification and that this vilasam had no relation to the business of the defendant carried on by him at Malacca.

Although I took copious notes of the arguments and attemped to take down *verbatim* the various points and submissions as and when specifically made, I have found it extremely difficult to correlate these various submissions in an intelligible order.

Numerous cases were quoted at length in support of these various (and varying) submissions, some of which are binding on me and some of which are not so binding. I only propose, however, to refer to those which have a direct bearing on the real issue before me and it is desirable to state what that isssue was. In my view, and apart altogether from the question of fraud, which issue was abandoned, the issue is and was as to what are the circumstances under which this Court would not refuse to enforce or give effect to a judgment obtained in a foreign Court. These circumstances are, in my opinion, as follows:—

Firstly, the foreign judgment must be a final judgment. (*Macfarlane v. Marcartney*[8]).

Secondly, the cause of action must be within the jurisdiction of the foreign Court which must be competent to deal with and entertain the action and to require the defendant to appear before it; and

Thirdly, the foreign judgment must not be repugnant to public policy or be founded on a cause of action which is not recognised according to general principles universally accepted.

If, on the face of the foreign judgment itself, or by evidence led, it appears that these principles have not been complied with, then our Courts will decline to enforce it.

These principles are specifically enumerated in the Reciprocal Enforcement of Judgments Ordinance (Cap. 46) and if they are shown to have been contravened then no judgment will be ordered to be registered.

During the course of the argument I intimated to counsel for the defence that their submissions appeared to me to amount in effect to the proposition that I was a Court of appeal trying an issue as to whether the decision of a Judge of the Court at Pudukkottai was correct in law, and I demurred to such a proposition.

The leading case on this point appears to be *Godard v. Gray*[3] and I make no apology for quoting at length from the combined judgments of Blackburn and Mellor, JJ. at page 149:—

> "There are a great many **dicta** and opinions of very eminent lawyers, tending to establish that the defendant in an action on a foreign judgment is at liberty to shew that the judgment was founded on a mistake, and that the judgment is so far examinable. In **Houlditch v. Donegall**, Lord Brougham goes so far as to say:—'The language of the opinions on one side has been so strong, that we are not warranted in calling it merely the inclination of our lawyers; it is their decision that in this country a foreign judgment is only **prima facie**, not conclusive evidence of a debt.' But there certainly is no case decided on such a principle; and the opinions on the other side of the question are at least as strong as those to which Lord Brougham refers.
>
> "Indeed it is difficult to understand how the common course of pleading is consistent with any notion that the judgment was only evidence. If that were so, every count on a foreign judgment must be demurrable on that ground. The mode of pleading shews that the judgment was considered, not as merely **prima facie** evidence of that cause of action for which the judgment was given, but as in itself giving rise, at least **prima facie**, to a legal obligation to obey that judgment and pay the sum adjudged. This may seem a technical mode of dealing with the question; but in truth it goes to the root of the matter. For if the judgment were merely considered as evidence of the original cause of action, it must be open to meet it by any counter evidence negativing the existence of that original cause of action.
>
> "If, on the other hand, there is a **prima facie** obligation to obey the judgment of a tribunal having jurisdiction over the party and the cause, and to pay the sum decreed, the question would be whether it was open to the unsuccessful party to try the cause over again in a Court, not sitting as a Court of appeal from that which gave the judgment. It is quite clear this could not be done where the action is brought on the judgment of an English tribunal; and, on principle, it seems the same rule should apply, where it is brought on that of a foreign tribunal. But we think it unnecessary to discuss this point, as the decisions of the Court of Queen's Bench in **Bank of Australasia v. Nias** of the Court of Common Pleas in **Bank of Australasia v. Harding**, and of the Court of Exchequer in **De Cosse Brissac v. Rathbone**, seem to us to leave it no longer open to contend, unless in a Court of error, that a foreign judgment can be impeached on the ground that it was erroneous on the merits; or to set up as a defence to an action on it, that the tribunal mistook either the facts or the law.
>
> "But there still remains a question which has never, so far as we know, been expressly decided in any Court.
>
> "It is broadly laid down, by the very learned author of Smith's Leading Cases, in the original note to **Doe v. Oliver**, that "it is clear that if the judgment appear on the face of the proceedings to be founded on a mistaken notion of the English law," it would not be conclusive. For this he cites **Novelli v. Rossi**, which does not decide that point, and no other authority; but the great learning and general accuracy of the writer makes his unsupported opinion and authority of weight; and accordingly it has been treated with respect. In **Scott v. Pilkington**, the Court expressly declined to give any opinion on the point not then raised before them. But we cannot find that it has been acted upon; and it is worthy of note that the present very learned editors of Smith's leading Cases have very materially qualified his position, and state it thus, if the judgment 'be founded on an incorrect view of the English law, knowingly or perversely acted on;' the doctrine thus qualified does not need to inquire how far it is accurate.
>
> "But the doctrine as laid down by Mr. Smith does apply here; and we must express an opinion on it, and we think it cannot be supported, and that the defendant can no more set up as an excuse, relieving him from the duty of paying the amount awarded by the judgment of a foreign tribunal having jurisdiction over him and the cause, that the judgment proceeded on a mistake as to English law, then he could set up as an excuse that there had been a mistake as to the law of some third country incidentally involved, or as to any other question of fact."

It is true that the judgment of a foreign court obtained in default of appearance would not be enforced in an English Court, where the defendant, at the time the suit was commenced, was not a subject of nor resident in the country in which the judgment was

obtained (*Schibsby v. Westenholze*[16A]) but those facts and circumstances are not present in the case before me.

None of the submissions made to me contravene the principles that I have enumerated and it was for these reasons, which I have now set out at some length, that I gave judgment for the plaintiff with costs at the conclusion of the hearing.

Judgment Accordingly.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., POYSER, C.J. (F.M.S.) & GORDON-SMITH, Ag. J.A.

July 1, 1940.

ALKAFF & CO.

v.

THE ASSISTANT CONTROLLER OF LABOUR.

[SINGAPORE SPECIAL APPEAL No. 2 of 1939]

Workmen's Compensation Ordinance (Cap. 70)—S. 24 sub-ss. 1, 3 and S. 26—Application by Controller on behalf of dependant of deceased workman—Necessity of legal proof of existence of dependant and of failure of attempt to settle by agreement.

Before any application in respect of workman's compensation can be made for settlement of the matter by a Commissioner the statutory condition precedent imposed by S. 24 (1) of the Workmen's Compensation Ordinance must be complied with. There must be a dependant in existence and an attempt must be made to settle by agreement. The Controller must be prepared with legal proof as to the existence of the dependant and also as to the failure of an attempt to settle by agreement.

Per Terrell, Ag. C.J. and Poyser, C.J. (F.M.S.)—The Controller has no right to go to the employer and claim compensation unless he is representing some actual person who is or may be entitled to such compensation and he has no **locus standi** unless he applies on the instructions of some such person. He must be authorised before he can act and is then in the same position as an advocate and solicitor.

Per Gordon-Smith, Ag. J.A. The Assistant Controller is authorised to represent or to act for and on behalf of the dependant of the deceased workman and it is immaterial how he may describe himself in the form of the application so long as it is made clear that he is acting in such representative capacity on behalf of an actual dependant and that the necessary particulars of the dependant are given.

Cases referred to:—

1. *Barron v. Carmichael,* (1912) 1 Workmen's Compensation Reports 312.
2. *Field v. Longden & Sons,* 18 T.L.R. 65.
3. *Pringh v. Harris,* (1925) 1 K.B. 573.
4. *Simpson v. Crowle,* (1921) 3 K.B. 243.

APPEAL from the judgment of the Commissioner for Workmen's Compensation (E. N. Taylor) allowed with costs in the High Court and below.

HEARING.

D. K. Walters for the appellants.

K. K. O'Connor for the respondents.

The facts and arguments sufficiently appear from the judgments.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This was an appeal from an award by the Commissioner for Workmen's Compensation directed to be heard before three Judges of the Supreme Court.

The facts are sufficiently set out in the judgment of Gordon-Smith, Ag. J.A. which I have had the opportunity of reading, and it is not necessary to recapitulate them.

Mr. O'Connor, counsel for the Assistant Controller of Labour, respondent on the appeal, raised certain preliminary points. The first of these was that the Commissioner gave a judgment on the 14th February, 1939, rejecting various preliminary objections raised by the appellants on the original hearing, and that no appeal was entered against such judgment, the only judgment that is appealed against being the final judgment of the Commissioner dated the 14th June, 1939. For the purpose of deciding this point it is necessary to examine the judgment of the 14th February 1939 (hereinafter referred to as the interlocutory order). It appears that it was drawn up by the Commissioner himself and was not submitted to or approved by the parties. The interlocutory order is in three parts:—the first directs certain amendments which were due to the fact that the form of the application was open to objection, the second part directed that "the application be fixed for hearing on Friday the 17th February at 10 a.m.", and the third that the costs of the preliminary objections be reserved. The order on the face of it makes no finding as to the preliminary objections, and as the procedure is the informal procedure applicable to the District Court, it may be presumed that, but for the necessity for amending the application, no formal order would have been drawn up. It was only on the 15th February, the day after the date of the interlocutory order that